IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 750

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
ROBERT L. GORDON, Director of Labor,
Petitioner,

vs.

NIGEL D. CAMPBELL, Collector of Internal Revenue,
Respondent.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION.

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Respondent, in opposing the petition of the State of Illinois for a writ of *certiorari*, in effect concedes that there is a conflict between the decision of the Supreme Court of Illinois in the instant case and the decision of the Supreme Court of Rhode Island in *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, modified 68 R. I. 358, with respect to the following substantial question:

In view of the intent of Congress, as manifested in the Social Security Act and related legislation, does Section 3466 of the Revised Statutes of the United States apply to give a claim of the United States for social security excise

taxes priority over the claim of a State for unemployment compensation contributions when such contributions are exacted under a State statute adopted in accordance with the Congressional policy evinced by the Federal Act?

Respondent, however, contends that review of this question is unnecessary in view of this Court's decision in *United States* v. *New York*, 315 U. S. 510. A plain reading of the *New York* case reveals its inapplicability to the question under consideration. The *New York* case did not involve Section 3466 of the United States Revised Statutes. It involved Section 64(a)(4) of the Bankruptcy Act[1] which places State and Federal claims on a parity. The following three issues were considered in the *New York* case: (1) Whether the claim of the United States based on Sections 801 and 802 of Title VIII of the Social Security Act was a claim for a debt rather than for taxes and thus not entitled to priority under Section 64(a)(4) of the Bankruptcy Act; (2) Whether a portion of the claim of the United States, based on Title IX of the Social Security Act, constituted a penalty rather than a tax; (3) The formula to be used in prorating the funds.

Obviously the decision in the *New York* case had no bearing on the question under consideration in the case at bar. As respondent concedes (Respondent's Brief 12), the *New York* case was expressly called to the attention of the Supreme Court of Rhode Island in the *Rivard* case (68 R. I. 362, 27 Atl. (2d) 855), and that Court held it inapplicable to the question of priority under Section 3466 of the United States Revised Statutes.

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[1] "Section 64. Debts which have priority.—a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be . . . (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof . . . " U. S. C., Title 11, § 104.

It is respectfully submitted that the conflict between the decisions of the Supreme Courts of Illinois and Rhode Island remains to be resolved by this Court.

Respondent implies (Respondent's Brief 8) that the only manner in which Section 3466 may be "waived" is by express declaration of Congress. The contention is untenable in view of the decisions of this Court that it will not apply Section 3466 where the concept of Federal priority is inconsistent with the intention of Congress, as manifested in other statutes. *United States* v. *Marxen*, 307 U. S. 200; *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478; *Mellon* v. *Michigan Trust Company*, 271 U. S. 236; *Cook County National Bank* v. *United States*, 107 U. S. 445. (Petitioner's Brief 12.) That Congress intended in the case of competing State and Federal Social Security claims, to waive the priority of Section 3466 is unmistakably demonstrated by the provisions of Titles III, VII and IX of the Social Security Act, the amendments to Title IX and related legislation of Congress (Petitioner's Brief 12-23).

Respondent contends that the finding of the court below that petitioner did not have a specific and perfected lien is in accord with the principle laid down in *United States* v. *Waddill*, 323 U. S. 353. (Respondent's Brief 8.) Petitioner concedes that as to the companion case—*People of the State of Illinois ex rel. Robert L. Gordon, Director of Labor, Petitioner*, v. *United States of America, Respondent*, No. 749,—such holding is correct and no such issue is therefore being raised before this Court in said companion case. However, in arriving at its finding, the court below merely considered the facts in the companion case and nowhere in its decision did it refer to the entirely dissimilar facts of the case at bar. (Petitioner's Brief 29-31.)

Significantly, respondent makes no attempt to show how the principle of *United States* v. *Waddill, supra,* squares with the facts in the instant case. Under the principle of the *Waddill* case, *supra,* petitioner's lien clearly possesses the characteristics of a specific and perfected lien.

Conclusion.

It is therefore respectfully submitted that the questions herein presented are Federal questions of substance not heretofore precisely determined by this Court; that such questions are of great importance at this particular time not only to the State of Illinois and all employers and employees therein but to all states and all employers and employees; that the conceded conflict of the Supreme Courts of Illinois and Rhode Island on the first of these issues should be passed upon and resolved by this Court; and that the decision of this Court in *United States* v. *New York, supra,* cited and relied upon by respondent, does not determine or control the decision of the issues herein presented.

The petition should therefore be allowed.

Respectfully submitted,

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